

**IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE**

MATTHEW SEFFERNICK,)
)
 Plaintiff/Appellant,)
)
 VS.)
)
 SAINT THOMAS HOSPITAL AND)
 BARRY E. YARBROUGH, M.D.,)
)
 Defendants/Appellees.)

Davidson Circuit
No. 93C-1800

Appeal No.
01-A-01-9606-CV-00282

FILED January 15, 1997 Cecil W. Crowson Appellate Court Clerk

OPINION ON PETITION TO REHEAR

The appellees, St. Thomas Hospital and Barry Yarbrough, M.D., have filed a respectful petition on four grounds.

Appellees insist first that the opinion of this Court conflicts with unpublished opinion of a Workers Compensation Panel of the Supreme Court which bears the following notice:

Notice: This opinion is designated as not for publication and may not be cited except as provided by Tenn. S.Ct. Rule 4.

The cited opinion does not state whether the excerpt of a deposition was authenticated by certificate or otherwise, or whether the deposition had ever been filed with the Trial Clerk.

In the present case, the unauthenticated excerpt was not filed, but was apparently attached to a "Notice of Filing" which does not qualify it for consideration by this Court.

Appellees next complain that this Court misapprehends the requirements of T.R.C.P. Rule 30.03 and 56.05, neither of which authorizes or requires the consideration of unauthenticated evidence attached to a pleading.

Appellees next complain that this Court acted upon its own motion in refusing to consider unauthenticated evidence, but cite no authority requiring this Court to consider evidence which it deems inappropriate for consideration.

Finally, appellees insist that the opinion of this Court is “at odds with” Rule 6 of the Rules of this Court which deals with procedural errors of a trial court and not determination of the competence of evidence presented to this Court for review.

The petition to rehear is respectfully denied.

ENTER _____

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

SAMUEL L. LEWIS, JUDGE

BEN H. CANTRELL, JUDGE